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TESTIMONY OF CHRISTINE RAPILLO EXECUTIVE ASSISTANT PUBLIC DEFENDER OFFICE OF THE CHIEF PUBLIC DEFENDER

COMMITTEE ON THE JUDICIARY MARCH 2, 2009

RAISED BILL NO. 6575, AN ACT CONCERNING REVISIONS TO PROVISIONS RAISING THE AGE OF JUVENILE JURISDICTION

The Office of the Chief Public Defender supports passage of most of the provisions of Raised Bill 6575, *An Act Concerning Revisions to Provisions Raising the Age of Juvenile Jurisdiction*. This bill will make changes necessary to incorporate 16 and 17 year olds into the juvenile justice system. It is similar to Substitute Bill 337, raised in the last legislative session. The proposal includes amendments to the processes and procedures in the juvenile court that will allow more efficient overall operations. It also attempts to address concerns raised by law enforcement officials who sit on the Juvenile Jurisdiction Planning and operations Coordinating Council (JJPOCC).

Section 1 deals with definitions used in juvenile delinquency cases. This section defines youth, which includes 16 and 17 year olds as a subset of child or juvenile for delinquency prosecutions. It also leaves all motor vehicle offenses and infractions committed by youth in the adult court. This was done to address concerns of law enforcement, who were concerned about how juvenile court would deal with driving offenses. Since most of these cases are resolved with a fine, this provision also makes fiscal sense, since that revenue stream would be maintained. Because some of the infractions and offenses allow for a term of imprisonment, the JJPOCC was concerned that a young person could receive adult jail time for a relatively minor offense. **Section 29** contains language that allows the adult court judge to transfer these cases to juvenile court when the services and programs available to the youth better serve the interests of the child and the community.

This bill contains several provisions designed to lessen the budget impact of the Raise the Age legislation. There are revisions aimed at decreasing the number of children entering the juvenile detention centers. It requires that all less restrictive alternatives be exhausted before a judge can place a child in detention and tightens up the criteria used. Under current law, a child can only be admitted to the detention with a court order or if he or she is charged with a Serious Juvenile Offense (SJO) as defined by Conn. Gen. Stat. Sec. 46b-120(12). **Section 1** also changes the definition of SJO to eliminate offenses that are drafted broadly and are often added to a list of charges to eliminate the need for a court order. This means that children cannot be detained on these charges, but the cases will need to be reviewed by a judge to ensure that detention is appropriate.

In addition to leaving motor vehicle cases in adult court, **Raised Bill 6575** contains several provisions designed to address the concerns of law enforcement and municipalities. Police will be given the discretion to release a child without waiting for a parent. They will be required to make reasonable efforts to notify a parent of an arrest, but will not be required to make face to face contact. This is designed to save staff hours spent waiting for parents. It will also lessen the use of the police lockup facilities for children who are waiting to be picked up. This should decrease the need to expand facilities in response to the change. Another possible statutory change that is not included in **Raised Bill 6575** is attached to this testimony. Federal law requires that juveniles be kept out of the sight and sound of adult inmates. Connecticut law prohibits holding children in any lock up where an adult might ever be held. This prevents police from using empty adult cells to hold juveniles. Amending Conn. Gen. Stat. Sec. 46b-133(d) to allow police to utilize empty cells if sight and sound separation is maintained will also help municipalities deal with the issue of lock up space.

Section 15 of **Raised Bill 6575** would allow police officers to question 16 and 17 year old juveniles without the child's parent being present. This is a major departure from current law, which requires that a parent be present before any statement taken from a juvenile can be admitted into court. The Office of the Chief Public Defender opposed this concession at the JJPOCC and continues to believe that it runs contrary to the policy behind raising the age. P.A. 07-4 was passed because this Legislature believed that 16 and 17 year olds were children and should be treated as children, even if they are charged with a crime. This conclusion is supported by significant research on adolescent brain development and the United States Supreme Court in the case of Roper v. Simmons. Both the science and the court conclude that the undeveloped state of the adolescent brain hinders a youth's ability to make decisions. The Roper court determined that this was significant enough to impact her manner in which young people are held criminally culpable for their actions and thus outlawed the use of the death penalty for those under

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the age of 18. The decision to talk to the police when suspected of a crime is often the most important choice a suspect makes. Current Connecticut law requires that a parent give approval before a child can attend a school field trip or get a piercing or tattoo. Certainly we can afford to have a parent participate in the decision to give a statement to police investigating a crime. If left unamended, **Conn. Gen. Stat. Sec. 46b-133** will provide this protection to all children in the juvenile court.

This bill makes other more technical changes to improve the functioning of the juvenile court. It provides that emancipated minors will not be considered to be juveniles. It allows the Judicial Branch to house Juvenile Probation Officers in available space at adult alternative incarceration centers. There are changes and clarifications to the use of educational records and vocational probation. The proposals contained in this bill are the result of many hours of work from people with highly diverse opinions on how 16 and 17 year olds should be incorporated into juvenile court. It was a collaborative but contentious effort and represents the best work of the JJPOCC. It is important that the Committee act favorably on this bill and that it pass the full legislature with all due speed so that the juvenile court system can prepare for whatever changes may be coming.

Sec. 46b-133. (Formerly Sec. 51-314). *(See end of section for amended version of subsection (b) and effective date.) Arrest of child. Release or detention of arrested child. Alcohol or drug testing or treatment as condition of release. Admission of child to overpopulated juvenile detention center.

(a) Nothing in this part shall be construed as preventing the arrest of a child, with or without a warrant, as may be provided by law, or as preventing the issuance of warrants by judges in the manner provided by section 54-2a, except that no child shall be taken into custody on such process except on apprehension in the act, or on speedy information, or in other cases when the use of such process appears imperative. Whenever a child is arrested and charged with a crime, such child may be required to submit to the taking of his photograph, physical description and fingerprints. Notwithstanding the provisions of section 46b-124, the name, photograph and custody status of any child arrested for the commission of a capital felony or class A felony may be disclosed to the public.

(b) Whenever a child is brought before a judge of the Superior Court, such judge shall immediately have the case proceeded upon as a juvenile matter. Such judge may admit such child to bail or release him in the custody of his parent or parents, his guardian or some other suitable person to appear before the Superior Court when ordered. If detention becomes necessary or desirable, the same shall be in the manner prescribed by this chapter.

(c) Upon the arrest of any child by an officer, such officer may release him to the custody of his parent or parents, guardian or some other suitable person or agency or may immediately turn him over to a juvenile detention center. When a child is arrested for the commission of a delinquent act and the child is not placed in detention or referred to a diversionary program, an officer shall serve a written complaint and summons on the child and his parent, guardian or other person having control of the child. Such parent, guardian or other person shall execute a written promise to appear in court at the time and place specified in such summons. If any person so summoned wilfully fails to appear in court at the time and place so specified, the court may issue a warrant for the child's arrest or a capias to assure the appearance in court of such parent, guardian or other person. The court may punish for contempt, as provided in section 46b-121, any parent, guardian or other person so summoned who wilfully fails to appear in court at the time and place so specified.

(d) The court or detention supervisor may turn such child over to a youth service program created for such purpose, if such course is practicable, or such child may be detained pending a hearing which shall be held on the business day next following his arrest. No child shall be detained after such hearing or held in detention pursuant to a court order unless it appears from the available facts that there is probable cause to believe that the child has committed the acts alleged and that there is (1) a strong probability that the child will run away prior to court hearing or disposition, (2) a strong probability that the child will commit or attempt to commit other offenses injurious to him or to the community before court disposition, (3) probable cause to believe that the child's continued residence in his home pending disposition will not safeguard the best interests of the child or the community because of the serious and dangerous nature of the act or acts he is alleged to have committed, (4) a need to hold the child for another jurisdiction or (5) a need to hold the child to assure his appearance before the court, in view of his previous failure to respond to the court process. Such probable cause may be shown by sworn affidavit in lieu of

testimony. No child shall be released from detention who is alleged to have committed a serious juvenile offense except by order of a judge of the Superior Court. Any child confined in a local lock up must be kept separate and apart from any adult detainee. [In no case shall a child be confined in a community correctional center or lockup, or in any place where adults are or may be confined,] except in the case of a nursing infant; nor shall any child at any time be held in solitary confinement. When a female child is held in custody, she shall, as far as possible, be in the charge of a woman attendant.

(e) The police officer who brings a child into detention shall have first notified, or made a reasonable effort to notify, the parents or guardian of the child in question of the intended action and shall file at the detention center a signed statement setting forth the alleged delinquent conduct of the child. Unless the arrest was for a serious juvenile offense, the child may be released by a detention supervisor to the custody of his parent or parents, guardian or some other suitable person.

(f) In conjunction with any order of release from detention the court may, when it has reason to believe a child is alcohol-dependent or drug-dependent as defined in section 46b-120, and where necessary, reasonable and appropriate, order the child to participate in a program of periodic alcohol or drug testing and treatment as a condition of such release. The results of any such alcohol or drug test shall be admissible only for the purposes of enforcing the conditions of release from detention.

(g) Whenever the population of a juvenile detention center equals or exceeds the maximum capacity for such center, as determined by the Judicial Department, the detention supervisor in charge of intake shall only admit a child who: (1) Is charged with the commission of a serious juvenile offense, (2) is the subject of an order to detain or an outstanding court order to take such child into custody, (3) is ordered by a court to be held in detention, or (4) is being transferred to such center to await a court appearance.